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***Via Certified Mail -  
Return Receipt Requested***

January 3, 2013

Operational Services Director  
General Manager  
Board of Directors  
Delta Diablo Sanitation District  
2500 Pittsburg-Antioch Highway  
Antioch, CA 94509-1373

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Operational Director, General Manager and Members of the Board:

The Clean Water Act ("CWA" or "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

Northern California River Watch ("River Watch") hereby places the Delta Diablo Sanitation District, hereinafter referred to as "the Discharger" on notice, that following the expiration of 60 days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Water Quality Plan ("Basin Plan,") as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permits.

## **INTRODUCTION**

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a)

prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. *See* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this NOTICE is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified the NPDES Permits of the Discharger for the Delta Diablo Sanitation District Wastewater Treatment Plant, and specifically identified the applicable Permit standard, limitation or condition being violated. A violation of the Permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often the Permit limitation being violated is self-explanatory and an examination of its language is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. In addition, River Watch has set forth narratives herein describing with particularity the activities leading to violations, and has incorporated by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its Permits, compliance with its Permits and any other information designed to inform the Discharger or the public.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is the Delta Diablo Sanitation District and those of its employees responsible for compliance with its Permits.



4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Permits and also in records created and/or maintained by or for the Discharger which relate to the Discharger's wastewater treatment plant and related activities as further described in this NOTICE.

5. *The date or dates of violation or a reasonable range of dates during which the allege activity occurred.*

River Watch has examined both RWQCB and the Discharger's records for the period from January 1, 2008 through January 1, 2013. As such, the range of dates covered by this NOTICE is from January 1, 2008 through January 1, 2013. River Watch will from time to time update this NOTICE to include all violations which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, identified herein as "River Watch". River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California and located in Sebastopol, California. River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org) or through its attorneys.

River Watch has retained legal counsel with respect to the violations identified in this NOTICE. All communications should be addressed to:

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### **DISCHARGER'S OPERATIONS**

The Discharger owns and operates the Delta Diablo Sanitation District Wastewater Treatment Plant ("Plant") which provides secondary treatment of wastewater from domestic, commercial, and industrial sources from Pittsburg and Antioch and the unincorporated community of Bay Point. The Plant and associated sewage collection and conveyance system



are currently regulated under Order No. R2-2009-0018, NPDES No. CA003857, and previously regulated under Order No. R2-2003-0114, NPDES No. CA003857. The Discharger's service area encompasses 42-square miles with 338 miles of tributary sanitary sewer lines. The Discharger's service area has a present population of approximately 200,000. The treatment process consists of screening, grit removal, primary and secondary clarification, biological treatment by trickling towers and/or aeration basins and digesters, chlorination, and de-chlorination. The Plant has an average dry weather design capacity to provide secondary level treatment for 16.5 million gallons per day ("mgd").

The average flow for 2011 was approximately 13.2 mgd. To address peak flows, the plant has a 2.2 million gallon ("mg") flow equalization tank, 11 mg emergency retention pond, 1 mg of equalization storage capacity, and approximately 4 mg of storage at the pump stations. Treated wastewater is discharged to New York Slough, a tributary of the San Francisco Bay Delta, through a submerged outfall (Discharge Point 001) equipped with a diffuser. The submerged outfall is located approximately 400 feet off shore at a depth of approximately 46 feet.

The Discharger also operates a Recycled Water Facility designed to treat up to 12.8 mgd of secondary level effluent from the secondary treatment facility to tertiary level standards. Secondary effluent is diverted upstream of the disinfection process and undergoes flocculation, clarification, sedimentation, filtration and disinfection before being distributed to recycled water users. The product water from the Recycled Water Facility is primarily used as cooling water make up for the Delta and Los Medanos Energy Centers with approximately 1% of that water sent for use by the local Parks and Recreation District. About 2 mgd of cooling tower blow-down from the Energy Centers is returned to the Plant and then combined with the secondary level treated wastewater. The mixture of secondary level treated wastewater and cooling tower blow-down undergoes chlorination and de-chlorination and then is discharged into New York Slough.

The Discharger provides wastewater collection services for the unincorporated community of Bay Point, and conveyance services for Bay Point, Antioch and Pittsburg. The cities of Antioch and Pittsburg own, operate and maintain satellite collection systems that feed into the Discharger's conveyance system. The Discharger owns and operates about 115 km of sewer lines, 5 flow equalization storage facilities, and 6 pump stations.

The Discharger's ageing wastewater collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. The structural defects in the collection system, which allow I/I into the sewer lines, result in a build-up of pressure which causes sewage system surface overflows ("SSOs"). Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as the San Francisco Bay Delta, a water of the United States.



As recorded in the California Integrated Water Quality System ("CIWQS") Interactive SSO Reports, the Discharger reported 13 SSOs between August 2008 and September 2012, with a combined volume of 11,537 gallons, 1,450 gallons of which reached surface waters. As an example, on December 24, 2011 there was a spill of reported volume of 5,925 gallons of untreated wastewater from a Discharger-owned sewer main at 162 Riverside Drive in Bay Point, 1,000 gallons of which discharged into a nearby surface water.

The Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems ("WDR") Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems. The Discharger is a permittee under the Statewide WDR, which requires that sewer system operators report SSOs to the State SSO database (CIWQS), including an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The Discharger's field reports regularly indicate the SSO start time as the same time or within a short time of when the Discharger was notified of the SSO. These equivalencies are highly unlikely and result in an under estimation of the duration of the spill. The Discharger's common practice of under estimating the duration of the spill leads to under estimating the volume of the spill. The Discharger's SSO records generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume which reached a surface water.

The Discharger also regularly reports spills as reaching a storm drainpipe but not reaching a surface water, based on questionable information which does not necessarily support the conclusion that the spill did not in fact reach a surface water. As an example, an SSO of reported volume of 10,000 gallons occurred on August 4, 2010 at the intersection of Seventh and K Streets in Antioch. The Discharger's field report stated the spill reached a storm drainpipe, that 9,800 gallons were recovered, and that none of the spilled sewage reached a surface water. The report listed the time the agency was notified as 12:55 and the spill start time as 12:35, 20 minutes prior to notification. There is no indication of the information relied upon to determine the spill start time. It is widely recognized that spill start time estimates are unreliable. The report indicates a spill rate of 75 gallons per minute, so that the likely under estimation of the spill duration implies a substantial under estimation of the spill volume. The report describes the terrain surrounding the point of blockage or spill cause as "flat", which could be taken to support the claim that all but 200 gallons of the spill was recovered. However, storm drains generally run downhill to a surface water. This spill report exemplifies the high degree of likelihood that the Discharger is failing to report all the spills from its collection system which reach surface waters. River Watch alleges that the Discharger regularly inaccurately reports SSOs as not reaching surface waters and regularly under estimates the volume of SSOs.

In addition to surface overflows which discharge overland into surface waters, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.



Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage.<sup>1</sup> River Watch alleges that such discharges are continuous wherever ageing, damaged structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters, including New York Slough and the San Francisco Bay Delta, both waters of the United States.

The Discharger has a history of failing to document and enforce compliance with the pre-treatment monitoring requirements by its industrial users, pursuant to 40 CFR 403.12(g), and a failure to take enforcement actions against its industrial users for violation of pre-treatment standards, pursuant to 40 CFR 403.12(g)(2). (See the 2010 Pre Treatment Compliance Inspection Summary Report.)

The Discharger's illegal discharge of untreated wastewater is a significant contribution to the degradation of the San Francisco Bay Delta, and tributary waters, such as New York Slough, with serious adverse effects on the beneficial uses of those water bodies. River Watch members residing in the area have a vital interest in bringing the Discharger's operations at the Plant and its associated collection system into compliance with the CWA.

### **REMEDIAL MEASURES REQUESTED**

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES Permits and the Basin Plan, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

1. A reduction of collection system I/I and SSOs, with an emphasis on impacts to surface waters and critical habitat, through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
  - a) A Condition Assessment of the entire sewer system that requires each sewer line to be CCTV'd every 8 years, but does not require all sewer lines to be on the same CCTV schedule. Accordingly, each sewer line will be on its own cycle, where such CCTV will occur at least every 8 years or more frequently, if necessary.

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<sup>1</sup> See Report of the Human Marker Study issued in July, 2008, conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

- b) Within 2 years, a Surface Water Condition Assessment of all sewer lines within 200 feet of a surface water, including storm drainage channels and creeks, which have not been CCTV'd within the prior 8 years.
  - c) Within 2 years after completion of the Surface Water Condition Assessment, the repair or replacement of all sewer lines within 200 feet of a surface water, including storm drainage channels and creeks, determined to be Significantly Defective – defined as receiving a rating of 4 or 5 under the PACP or comparable rating system for structural defects of sewer lines. The highest priority for repair or replacement shall be assigned to Significantly Defective lines in areas designated as critical habitat for Endangered Species Act listed species.
2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
- a) Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 10 years prior to the transfer;
  - b) The occurrence of 2 or more SSOs caused by the same private sewer lateral within 2 years;
  - c) A change of the use of the structure served from:
    - i. residential to non-residential uses
    - ii. to a non-residential use that will result in a higher flow than the current non-residential use; and,
    - iii. non-residential uses where the structure served has been vacant/unoccupied for more than 3 years;
  - d) Upon replacement or repair of any part of the sewer lateral;
  - e) Upon issuance of a building permit with a valuation of \$25,000.00 or more;
  - f) Upon significant repair or replacement of the main sewer line to which the lateral is attached.
3. Compliance with monitoring and reporting requirements, especially regarding all SSOs which reach storm drains or discharge directly to waters of the State, including a more detailed accounting of SSOs and remedial actions sufficient to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions.



4. Water quality sampling and testing whenever it is estimated that an SSO of 50 gallons or more enters surface waters. Samples to be collected from 3 locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for shall include Ammonia, Total Coliform, E. coli and CAM-17 toxic metals. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the Discharger shall determine and address the cause of the SSO that enters surface waters, and shall employ the following measures to prevent future overflows:
  - a) If the SSO is caused by a structural defect, then immediate spot repair of the defect or replacement of the entire line;
  - b) If the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then performance of additional maintenance or cleaning, and any other appropriate measures to fix the non-structural defect.
5. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the Discharger's web site to the State Water Resources Control Board's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
6. Performance of human marker sampling on creeks, rivers, wetlands and areas of the San Francisco Bay Delta adjacent to the Discharger's sewer lines to test for sewage contamination from underground exfiltration. The highest priority shall be assigned to testing in waters designated as critical habitat of Endangered Species Act listed species.

## **VIOLATIONS**

River Watch alleges that for the period January 1, 2008 through January 1, 2013, the Discharger has violated the requirements of its NPDES Permits, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Discharger's NPDES Permits. Said violations are evidenced and reported in the Discharger's Self Monitoring Reports compiled in compliance with its NPDES Permits, or other orders of the RWQCB, and other documentation filed with the RWQCB or in the Discharger's possession, and as evidenced by unpermitted discharges due to failures in the Discharger's collection system. River Watch alleges these violations are continuing. The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, include but are not limited to the following categories in the NPDES Permits:



## **Discharge Prohibitions**

<b><u>Violations</u></b>	<b><u>Description</u></b>
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<b>1800</b>	<b>Collection system overflows caused by underground exfiltration.</b> This is an event in which untreated sewage is discharged from the collection system prior to reaching the Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from January 1, 2008 through January 1, 2013.
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(ORDER NO. R2-2009-0018, - Discharge Prohibitions III.E).

(ORDER NO. R2-2003-0114, - Discharge Prohibitions, A.5).

ORDER NO. R2- 2009-0018, Discharge Prohibitions III.E:

"Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

ORDER NO. R1-2003-0114, Discharge Prohibitions A.5:

"This Order prohibits discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State."

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the Plant reported in Self Monitoring Reports, video inspection of the collection system, and testing of waterways adjacent to sewer lines, including creeks, wetlands, rivers and the San Francisco Bay Delta, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

<b><u>Violations</u></b>	<b><u>Description</u></b>
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<b>25</b>	<b>SSOs.</b> As evidenced in the CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.
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(ORDER NO. R2-2009-0018, - Discharge Prohibitions III.E).

(ORDER NO. R2-2003-0114, - Discharge Prohibitions, A.5).

ORDER NO. R2- 2009-0018, Discharge Prohibitions III.E:

"Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

**ORDER NO. R1-2003-0114, Discharge Prohibitions A.5:**

"This Order prohibits discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State."

**Pretreatment Requirements**

<u>Violations</u>	<u>Description</u>
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<b>15</b>	<b>Failure to implement and enforce pretreatment program.</b> As evidenced by RWQCB inspection reports.
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(ORDER NO. R2-2009-0018, Provisions VI. C.5.a).

(ORDER NO. R1-2003-0114, Other Discharge Characteristics and Permit Conditions, Pretreatment Program).

**ORDER NO. R2-2009-0018, Provisions VI. C.5.a:**

"(1) The Discharger shall implement and enforce its approved pretreatment program in accordance with federal Pretreatment Regulations (40 CFR 403), pretreatment standards promulgated under Sections 307(b), 307(c), and 307(d) of the CWA, pretreatment requirements specified under 40 CFR 122.44(j), and the requirements in Attachment H, "Pretreatment Requirements."

**ORDER NO. R1-2003-0114, Other Discharge Characteristics and Permit Conditions, Pretreatment Program:**

"The Discharger has implemented and is maintaining a U.S. EPA approved pretreatment program in accordance with Federal pretreatment (40 CFR 403) and the requirements specified in Attachment E 'Pretreatment Requirements' and its revisions thereafter."

**Monitoring Requirements**

<u>Violations</u>	<u>Description</u>
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<b>45</b>	<b>Failure to monitor, report or adequately describe violations.</b> The majority of these violations occur due to failure to report violations of Discharge Prohibitions A.5 of Order No. R2-2003-0114, failure to report violations of Discharge Prohibition III.E of Order No. R2-2009-0018, as well as failure to adequately describe reported violations of said provisions.
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## CONCLUSION

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this NOTICE.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter, River Watch intends to file a citizen's suit under § 505(a) of the Act against the Discharger for violations at the Plant and its associated collection system identified in this NOTICE.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,



Jerry Bernhaut

cc: Administrator  
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